

RESOLUTION NO. 11-115

RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA AUTHORIZING THE MAYOR AND THE ACTING CITY CLERK, AS ATTESTING WITNESS, ON BEHALF OF THE CITY, TO RENEW THE TURF AND LANDSCAPE MAINTENANCE JOINT PARTICIPATION AGREEMENT WITH THE STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION TO MAINTAIN THE IRRIGATION SYSTEM, MULCH AREAS, CONCRETE PAVERS AND PLANTINGS ALONG THE MEDIAN AND SHOULDER OF DESIGNATED STATE ROADS, A COPY OF WHICH IS ATTACHED HERETO AS EXHIBIT "1", FOR A TERM OF ONE YEAR, IN THE AMOUNT OF \$142,867.53, WITH AN OPTION TO RENEW FOR TWO SUCCESSIVE ANNUAL TERMS UPON AGREEMENT OF THE PARTIES

WHEREAS, pursuant to Hialeah, Fla., Resolution 2000-58 (May 25, 2000), the City of Hialeah entered into a five-year agreement to compensate the City for maintaining landscaped roadside areas and median strips on state roads, under the same terms as a prior 1997 agreement; and

WHEREAS, pursuant to Hialeah, Fla., Resolution 03-75 (June 27, 2003), the City of Hialeah and the Florida Department of Transportation ("FDOT") entered into Modification No. 1 to the 2000 agreement, modifying the scope of work to include maintenance of the new irrigation system, concrete pavers, mulch and other plantings along the shoulder and median between West 19 Street to Palm Avenue, on Okeechobee Road; and

WHEREAS, pursuant to Hialeah, Fla., Resolution 03-130 (December 2, 2003), as a result of the reconstruction of Okeechobee Road (State Road 25), the City of Hialeah and FDOT entered into Modification No. 2 to the 2000 agreement, amending the scope of work to include maintenance of the new irrigation system, concrete pavers, mulch and other plantings along the shoulder and the median between Palm Avenue and S.E. 7 Avenue, on Okeechobee Road; and

WHEREAS, pursuant to Hialeah, Fla., Resolution 06-74 (June 15, 2006), the City of Hialeah and FDOT entered into Modification No. 3 to the 2000 agreement, amending the scope of work to exclude the median and shoulder areas of Okeechobee Road, from West 18 Avenue to east of West 12 Avenue, Hialeah, Florida.

WHEREAS, pursuant to Hialeah, Fla., Resolution 08-105 (Aug. 28, 2008), the City of Hialeah and FDOT renewed the landscaping maintenance agreement, expanding the scope of work to include other areas along Le Jeune Road, Palmetto Expressway, service roads along NW 138 Street; and

WHEREAS, pursuant to Hialeah, Fla., Resolution 10-17 (Feb. 11, 2010), the City renewed the 2000 agreement as revised by Modification No. 1, Modification No. 2 and

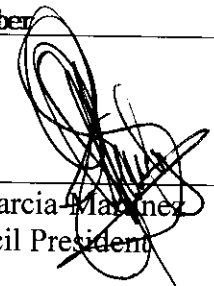
Modification No. 3 for the term of one year with an option to extend the term for an additional length of time, up to a maximum of three years; and

WHEREAS, the City of Hialeah finds that it is in its best interest of the community to renew the Turf and Landscaping Maintenance Joint Participation Agreement with FDOT.

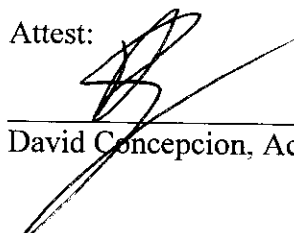
NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1: The City of Hialeah, Florida hereby authorizes the Mayor and the Acting City Clerk, as attesting witness, on behalf of the City, to renew the Turf and Landscape Maintenance Joint Participation Agreement with the State of Florida, Department of Transportation, to maintain the irrigation system, mulch areas, concrete pavers and plantings along the median and shoulder of designated state roads, a copy of which is attached hereto and made a part hereof as Exhibit "1", for a term of one year, in the amount of \$142,867.53, with an option to renew for a two successive annual terms upon agreement of the parties.

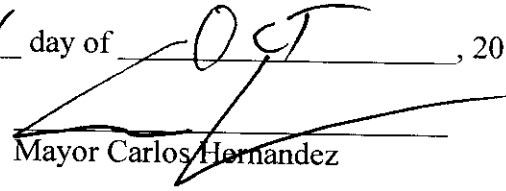
PASSED AND ADOPTED this 25th day of October, 2011.


Isis Garcia-Martinez
Council President

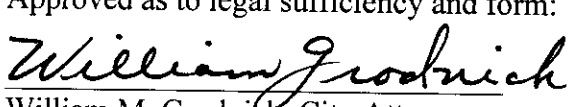
Attest:


David Concepcion, Acting City Clerk

Approved on this 31 day of Oct, 2011.


Mayor Carlos Hernandez

Approved as to legal sufficiency and form:


William M. Grodnick, City Attorney

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Resolution was adopted by a 6-0 vote with Councilmembers, Caragol, Casals-Muñoz, Cue-Fuente, Garcia-Martinez, Hernandez and Yedra voting "Yes", Councilmember Gonzalez absent.

**TURF AND LANDSCAPE MAINTENANCE
JOINT PARTICIPATION AGREEMENT
BETWEEN THE
FLORIDA DEPARTMENT OF TRANSPORTATION
AND THE
CITY OF HIALEAH**

This Agreement, is made and entered into this ____ day of _____, 20__, by and between the State of Florida Department of Transportation, a component agency of the State of Florida, hereinafter referred to as the 'DEPARTMENT', and the City of Hialeah, a municipal corporation of the State of Florida, existing under the Laws of the State of Florida, hereinafter referred to as the CITY.

RECITALS:

WHEREAS, the DEPARTMENT has jurisdiction and maintains the State Road (S.R.) 25, S.R. 823, S.R. 826 (Service Roads), S.R. 916, S.R. 932, S.R. 953, S.R. 944 and S.R. 934 in the CITY; and

WHEREAS, the DEPARTMENT, as part of the continual updating of the State of Florida Highway System and for the purpose of safety, has created roadside areas and median strips on the State Highway System within the corporate limits of the CITY; and

WHEREAS, the DEPARTMENT, at the CITY's request, has agreed to reimburse the CITY for the maintenance of turf and landscape, hereinafter referred to as the 'PROJECT', and

WHEREAS, the CITY recognizes that said median strips and roadside areas contain turf and landscape, which shall be maintained in accordance with Exhibit "A", 'Maintenance Responsibilities', which is herein incorporated by reference; and

WHEREAS, the DEPARTMENT has programmed funding for the PROJECT under Financial Project Number **252310-2-78-01**, and has agreed to reimburse the CITY for turf and landscape maintenance elements which are outlined in the attached Exhibit "B", 'Project Limits & Financial Summary', which is herein incorporated by reference; and

WHEREAS, the parties hereto mutually recognize the need for entering into an Agreement designating and setting forth the responsibilities of each party; and

WHEREAS, the parties are authorized to enter into this Agreement pursuant to **Section 339.08(e) and 339.12, Florida Statutes (F.S.)**;

NOW, THEREFORE, in consideration of the premises, the mutual covenants and other valuable considerations contained herein, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. INCORPORATION OF RECITALS

The foregoing recitals are true and correct and are incorporated into the body of this Agreement, as if fully set forth herein.

2. GENERAL REQUIREMENTS

- a. The CITY shall submit this Agreement to its CITY Commission for ratification or approval by resolution. A copy of said resolution is attached hereto as Exhibit "C", 'City of Hialeah's Resolution', and is herein incorporated by reference.
- b. The CITY:
 - i. shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the CITY during the term of this Agreement; and
 - ii. shall expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the Agreement term.
- c. The CITY shall not commence the PROJECT until a Notice to Proceed has been provided from the DEPARTMENT, which shall become the effective date of this Agreement and shall not precede the date provided on page one (1) of the Agreement.
- d. The CITY shall be responsible for the maintenance of all areas that have turf and landscape within the DEPARTMENT's right-of-way as described in Exhibit "A", 'Maintenance Responsibilities'.
- e. The CITY shall be responsible for performing the required maintenance with a minimum frequency of eighteen (18) times per year for: Slope Mowing, Mowing Small Machine, Weed Control Manual and Edging & Sweeping and twelve (12) times per year for: Litter Removal and Landscape Maintenance.
- f. All turf and landscape maintenance shall be in accordance with the latest edition of the State of Florida "Guide for Roadside Mowing" and the latest edition of the "Maintenance Rating Program" and Index 546 of the latest FDOT Design Standards.
- g. The CITY shall submit a work schedule to the DEPARTMENT. In addition, before the CITY starts the work, the DEPARTMENT shall be notified, via fax, of the state road(s) and the day(s) in which the CITY will be working. The fax shall be sent to the attention of the North Miami-Dade Maintenance Engineer, at 305-

640-7197.

- h. The CITY shall not be responsible for the clean-up, removal and disposal of debris from the DEPARTMENT's right of way following a natural disaster (i.e. hurricane, tornados, etc.). However, the cost of any cycle or part thereof impaired by any such event may be deducted from the DEPARTMENT's affected quarterly payment to the CITY.
- i. It is understood between the parties hereto that all the landscaping covered by this Agreement may be removed, relocated or adjusted at any time in the future as found necessary by the DEPARTMENT in order that the adjacent state road be widened, altered or otherwise changed and maintained to meet with future criteria or planning of the DEPARTMENT.

3. FINANCIAL PROVISIONS

- a. Eligible PROJECT costs may not exceed ONE HUNDRED FORTY TWO THOUSAND EIGHT HUNDRED SIXTY SEVEN DOLLARS AND FIFTY THREE CENTS (\$142,867.53), as outlined in Exhibit "B", 'Project Limits & Financial Summary'.
- b. The DEPARTMENT agrees to pay the CITY for the herein described services at a compensation as detailed in this Agreement.
- c. The CITY shall provide the following quantifiable, measurable and verifiable units of deliverables. Each deliverable must specify the required minimum level of service to be performed and the criteria for evaluating successful completion. Said deliverables consists of:
 - i. Mowing Small Machine
 - ii. Weed Control Manual
 - iii. Slope Mowing
 - iv. Edging & Sweeping
 - v. Landscape Maintenance
 - vi. Litter Removal
- d. Invoices shall be submitted by the CITY in detail sufficient for a proper pre-audit and post audit thereof, based on the quantifiable, measurable and verifiable units of deliverables as established in Section c above and Exhibit "B". Deliverables must be received and accepted in writing by the DEPARTMENT's Project Manager prior to payments.

- e. Supporting documentation must establish that the deliverables were received and accepted in writing by the CITY and that the required minimum level of service to be performed based on the criteria for evaluating successful completion as specified in Section c has been met.
- f. Travel costs will not be reimbursed.
- g. The CITY providing goods and services to the DEPARTMENT should be aware of the following time frames. Upon receipt, the DEPARTMENT has five (5) working days to inspect and approve the goods and services. The DEPARTMENT has twenty (20) days to deliver a request for payment (voucher) to the Department of Financial Services. The twenty (20) days are measured from the latter of the date the invoice is received or the goods or services are received, inspected, and approved.
- h. If a payment is not available within forty (40) days, a separate interest penalty at a rate as established pursuant to **Section 55.03(1), F.S.**, will be due and payable, in addition to the invoice amount, to the CITY. Interest penalties of less than one (1) dollar will not be enforced unless the CITY requests payment. Invoices have to be returned to the CITY because of CITY preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the DEPARTMENT.
- i. A Vendor Ombudsman has been established within the Department of Financial Services. The Duties of this individual include acting as an advocate for the CITY who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at 850-413-5516.
- j. Records of costs incurred under the terms of this Agreement shall be maintained and made available upon request to the DEPARTMENT at all times during the period of this Agreement and for five (5) years after final payment is made. Copies of these documents and records shall be furnished to the DEPARTMENT upon request. Records of costs incurred include the CITY's general accounting records and the project records, together with supporting documents and records, of the contractor and all subcontractors performing work on the project, and all other records of the contractor and subcontractors considered necessary by the DEPARTMENT for a proper audit of costs.
- k. In the event this contract is for services in excess of \$25,000.00 and a term for a period of more than 1 year, the provisions of **Section 339.135(6)(a), F.S.**, are hereby incorporated:

“The DEPARTMENT, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The DEPARTMENT shall require a statement from the

Comptroller of the DEPARTMENT that such funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding 1 year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the DEPARTMENT which are for an amount in excess of TWENTY FIVE THOUSAND DOLLARS (\$25,000.00) and which have a term for a period of more than 1 year.”

- l. The DEPARTMENT’s obligation to pay is contingent upon an annual appropriation by the Florida Legislature.

4. COMMUNICATIONS

- a. All notices, requests, demands, consents, approvals and other communications which are required to be served or given hereunder, shall be in writing and hand-delivered or sent by either registered or certified U.S. mail , return receipt requested, postage prepaid, addressed to the party to receive such notices as follows:

To DEPARTMENT: Florida Department of Transportation
1000 NW 111th Avenue, Room 6205
Miami, FL 33172-5800
Attention: District Maintenance Engineer

To CITY: City of Hialeah
5601 E. 8 Avenue
Miami, FL 33013

Attention: Director of Streets

5. INVOICING

- a. The CITY shall submit quarterly invoices for DEPARTMENT review, approval, and payment in accordance with this Agreement. Quarterly payments will be made upon invoice approval in an amount not to exceed one fourth of the eligible PROJECT costs. All costs charged to the PROJECT, including any approved services contributed by the CITY or others, shall be supported by properly executed payroll, time records, invoices, contracts or vouchers evidencing in proper detail the nature and propriety of the charges.
- b. In the event temporary work by the DEPARTMENT’s forces or by other Contractors temporarily prevent the CITY from performing the work described in this Agreement, the DEPARTMENT shall deduct from the affected quarterly payment(s) the acreage affected area and only compensate the CITY for the actual work it performs.

- i. The DEPARTMENT shall initiate this procedure only if the temporary work prevents the CITY from performing its work for a period of one (1) month or longer.
- c. In the event this Agreement is terminated as established in Section 8 herein, no payment will be prorated for the quarter in which termination occurs.

6. MAINTENANCE DEFICIENCIES

If the District Maintenance Engineer determines that the CITY is not accomplishing its responsibilities under this Agreement, said District Maintenance Engineer may issue written notice, in care of the CITY on notice thereof. Thereafter, the CITY shall have a period of thirty (30) calendar days within which to correct the cited deficiency or deficiencies. If said deficiencies are not corrected within this time period the DEPARTMENT may, at its option, proceed as follows:

- a. Maintain the median or roadside area(s) declared deficient with DEPARTMENT and/or a Contractor's material, equipment and personnel. The actual cost for such work will be deducted from the DEPARTMENT's affected quarterly payment to the CITY; or
- b. Terminate this Agreement.

7. EXPIRATION/RENEWAL

This Agreement is for a term of one (1) year beginning on the date provide in the Notice to Proceed; and may be renewed twice, only if mutually agreed to in writing by the DEPARTMENT and the CITY. Any such renewal shall be subject to the same terms and conditions set forth in this Agreement, and shall be contingent upon both satisfactory CITY performance evaluations by the DEPARTMENT and the availability of funds.

This Agreement may be extended if mutually agreed in writing by both parties, for a period not to exceed six (6) months and shall be subject to the same terms and conditions set forth in this Agreement. There shall be only one (1) extension of this Agreement.

8. TERMINATION

This Agreement, or part hereof, is subject to termination under any one of the following conditions:

- a. In the event the DEPARTMENT exercises the option identified by Section 6 of this Agreement.
- b. As mutually agreed by both parties.

- c. In accordance with **Section 287.058(1)(c), F.S.**, the DEPARTMENT shall reserve the right to unilaterally cancel this Agreement if the CITY refuses to allow public access to any or all documents, papers, letters, or other materials made or received by the CITY pertinent to this Agreement which are subject to provisions of Chapter 119, of the F.S.

9. ENTIRE AGREEMENT

This Joint Participation Agreement is the entire Agreement between the parties hereto, and it may be modified or amended only by mutual consent of the parties in writing.

10. GOVERNING LAW

This Agreement shall be governed and construed in accordance with the laws of the State of Florida.

11. AMENDMENT

This Agreement may be amended by mutual agreement of the DEPARTMENT and the CITY expressed in writing, executed and delivered by each party.

12. INVALIDITY

If any part of this Agreement shall be determined to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, if such remainder continues to conform to the terms and requirements of applicable law.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, on the day and year above written.

CITY OF HIALEAH:

**STATE OF FLORIDA, DEPARTMENT
OF TRANSPORTATION:**

BY: _____
CITY MAYOR

BY: _____
DISTRICT SECRETARY

ATTEST: _____
(SEAL) CITY CLERK

ATTEST: _____
(SEAL) EXECUTIVE SECRETARY

LEGAL REVIEW:

CITY ATTORNEY

DISTRICT CHIEF COUNSEL

Exhibit "A"

Maintenance Responsibilities

The CITY shall be responsible for the maintenance of all turf and landscape areas within the DEPARTMENT's right of way on S.R. 25, S.R. 823, S.R. 826, S.R. 916, S.R. 932, S.R. 953 and S.R. 934, S.R. 944 as described below:

- a. Mow, cut and/or trim, and edge the grass or turf in accordance with the latest edition of the State of Florida "Guide for Roadside Mowing" and the latest edition of the "Maintenance Rating Program".
- b. Properly prune all plants, which include, but not limited to, plant and tree trimmings, in accordance with the latest edition of the "Maintenance Rating Program" and Index 546 of the latest FDOT Design Standards.
- c. Pruning such parts thereof which may present a visual or other safety hazard for those using or intending to use the right-of-way.
- d. Remove and properly dispose of litter from roadside and median strips.
- e. Remove and properly dispose of dead, diseased or otherwise deteriorated plants in their entirety.
- f. All work by the CITY shall be executed on the roadway under a traffic control plan in accordance with DEPARTMENT's latest edition of the "FDOT Design Standards".

FDOT Financial Project Number: 252310-2-78-01

County: Miami-Dade

FDOT Project Manager: Richard Kenney Tel: 305-640-7197

City Project Manager: Mr. Jorge Hernandez, Director of Streets

Exhibit "B"

Project Limits & Financial Summary

Below are the PROJECT limits and acreage of the areas to be maintained by the CITY under this Agreement.

25	Okeechobee Rd.	Palmetto Expressway	NW 36th St.
823	Red Road	Okeechobee Rd.	W 78th St.
826	E. Service Rd.	Okeechobee Rd.	NW 138th St.
826	W. Service Rd.	NW 138th St.	NW 103th St.
916	NW 138th St.	Palmetto Expressway	NW 57 Ave.
932	NW 103rd St.	Palmetto Expressway	SCL Overpass at RR Tracks
953	Le Jeune Rd.	Okeechobee Rd.	NW 119th St.
934	Hialeah Expressway	Okeechobee Rd.	E. 6 Av.
944	Hialeah Drive	E. 4 Avenue	E. 10 Av.

Slope Mowing (E104-4-2)	9.191	AC	18	165.438	\$ 35.00	\$ 5,790.33
Mowing Small machine (E104 4 3)	33.962	AC	18	611.316	\$ 35.00	\$ 21,396.06
Weed Control Manual (Weed-eater, Mowing) (E104 50)	7.653	AC	18	137.754	\$ 200.00	\$ 27,550.80
Litter Removal (E110 30)	40.092	AC	12	481.104	\$ 10.00	\$ 4,811.04
Edging & Sweeping (E110 32 1)	52.325	PM	18	941.85	\$ 10.00	\$ 9,418.50
Landscape Maintenance (E580 3 2)	5.132	AC	12	61.584	\$ 1,200.00	\$ 73,900.80
TOTAL						

TOTAL ANNUAL AMOUNT ELIGIBLE FOR REIMBURSEMENT: \$ 142,867.53

Exhibit "C"
City of Hialeah's Resolution

To be herein incorporated once approved by the CITY Council.